



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383 and 384**

**[Docket No. FMCSA-2007-27659]**

**RIN 2126-AB59**

**Commercial Driver's License Testing and Commercial Learner's Permit Standards**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its May 9, 2011, final rule in response to certain petitions for reconsideration. The 2011 final rule amended the commercial driver's license (CDL) knowledge and skills testing standards and established new minimum Federal standards for States to issue the commercial learner's permit (CLP). The Agency received 34 petitions for reconsideration that covered a wide range of issues. FMCSA granted or denied each of these petitions, by orders available in the docket referenced at the beginning of this notice. Today's final rule addresses the petitions that were granted.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366-5014 or e-mail [robert.redmond@dot.gov](mailto:robert.redmond@dot.gov). Office hours are from 8:00 a.m. to 4:30 p.m. If you have questions on the docket, call Ms. Barbara Hairston, Docket Operations, telephone 202-366-3024.

**SUPPLEMENTARY INFORMATION:**

## **I. LEGAL BASIS**

This rule is based on the same authority as FMCSA's final rule on "Commercial Driver's License Testing and Commercial Learner's Permit Standards" published on May 9, 2011 [76 FR 26854]; for a complete discussion of that authority, see the Legal Basis section of the 2011 rule [76 FR at 26855].

Briefly, this rule implements or revises certain provisions of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended [49 U.S.C. chapter 313]; the Motor Carrier Safety Act of 1984 (MCSA), as amended [49 U.S.C. 31136]; and the Motor Carrier Act of 1935 (MCA) [49 U.S.C. 31502(b)]. The rule also carries out certain provisions of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) [Pub. L. 105-178, 112 Stat. 107, June 9, 1998]; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005]; and the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) [Pub. L. 109-347, 120 Stat. 1884, Oct. 13, 2006].

The CMVSA established the commercial driver's license (CDL) and drug and alcohol testing programs. The MCSA directed FMCSA to ensure that its safety regulations meet certain general objectives. That statute also underlies most of FMCSA's safety regulations including, as supplemental authority, those related to the CDL program. The MCSA inaugurated Federal regulation of motor carrier safety and provided broad authority over for-hire and private motor carriers.

Sec. 4019 of TEA-21 required the Department of Transportation (DOT) to determine whether the CDL testing system accurately measures the knowledge and skills needed to operate a commercial motor vehicle (CMV) and, if not, to correct the system. Sec. 4122 of SAFETEA-

LU required FMCSA to prescribe regulations on minimum uniform standards for the issuance of commercial learner's permits (CLPs), as it had already done for CDLs. Sec. 703 of the SAFE Port Act required the Secretary of Transportation to carry out recommendations issued by the DOT's Office of Inspector General (OIG) in 2002, 2004, and 2006 concerning performance-oriented requirements for English language proficiency, verification of the legal status of commercial drivers, and fraud-reduction in the CDL program. The 2011 final rule implemented all of these mandates.

The Agency received 34 petitions seeking reconsideration of various elements of the 2011 rule. FMCSA is adopting this rule without additional notice and opportunity for comment because the issues raised by petitioners have already been subjected to the full range of notice and comment, starting with the notice of proposed rulemaking (NPRM) in 2008 [73 FR 19282, April 9, 2008]. Many parties submitted comments on the NPRM; the Agency responded at length in the preamble to the 2011 rule. A number of the petitions for reconsideration repeated the comments and suggestions submitted to the Agency in response to the 2008 NPRM. However, some of the petitions included additional analyses and data such that FMCSA is persuaded to adopt changes to the 2011 final rule. These changes include non-substantive changes to clarify the Agency's intent and to resolve confusion over the rule's requirements. The changes also include amendments to lessen the regulatory burden the 2011 rule placed on both public and private entities where such changes fall within the scope of or are the logical outgrowth of the 2008 NPRM. One final change expands the amount of time States have to come into compliance with the new requirements because of changes made in today's final rule. Under these circumstances, a further round of notice and comment would serve no purpose and is not required by the Administrative Procedure Act.

## **II. BACKGROUND**

On April 9, 2008, FMCSA issued a notice of proposed rulemaking (NPRM) to amend the CDL knowledge and skills testing standards and establish new minimum Federal standards for States to issue the commercial learner's permit (CLP) (73 FR 19282). On May 9, 2011, FMCSA issued a final rule implementing these changes. In response to the final rule, FMCSA received 34 petitions for reconsideration. FMCSA has decided to publish a new final rule amending several provisions of the May 9, 2011 rule.

For additional background information, please see the Background section of the May 9, 2011 final rule (76 FR 26854).

## **III. DISCUSSION OF THE PETITIONS FOR RECONSIDERATION**

After careful review, FMCSA decided to grant some petitions, in whole or in part, and deny others. As a result, FMCSA is publishing a new final rule modifying seven provisions of the May 2011 final rule. The grant and denial orders are available in this rulemaking docket, referenced at the beginning of this notice.

In this final rule, FMCSA modifies the following provisions, which granted, in whole or in part, are in response to the petitions for reconsideration:

1. State Procedures – 49 CFR 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5)
2. Requiring Two Employees to Verify Documents – 49 CFR 383.73(m)
3. Prohibiting Training Schools from Administering Skills Tests – 49 CFR 383.75(a)(7)
4. Bonding Requirements – 49 CFR 383.75(a)(8)(v)
5. Prohibiting States from Using a Photo on the CLP – 49 CFR 383.153(b)(1) and 384.227
6. Requiring Annual Background Checks for Skills Test Examiners – 49 CFR 384.228(h)

7. Although FMCSA initially denied petitions seeking to delay the May 2011 final rule's compliance date, FMCSA reverses that decision and modifies the following additional provision: Substantial compliance – general requirements – 49 CFR 384.301(f).

FMCSA denied the remaining issues submitted for reconsideration.

State Procedures – 49 CFR 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5)

Sections 383.73(b)(6) and 383.73(c)(7) require States to check for legal presence and domicile, but provide for an exception stating that this only needs to be done once after July 8, 2011, provided that a notation is made on an individual's record. Some States requested that the Agency extend this exception to renewals and upgrades.

Sections 383.73(b)(6) and 383.73(c)(7) state that the exception to checking for legal presence and domicile applies to initial issuances, transfers, and renewals; however, the exception does not appear in § 383.73(d)(7), which governs renewals. In addition, § 383.73 does not specify whether the exception applies to upgrades, which are governed by § 383.73(e)(5). The Agency acknowledges that the exception was not written as the Agency intended. As a result, FMCSA amends §§ 383.73(b)(6), 383.73(c)(7), 383.73(d)(7), and 383.73(e)(5) to clarify that the exception covers all transactions, whether initial issuance, transfer, renewal, or upgrade, made after July 8, 2011.

Requiring Two Employees to Verify Documents – 49 CFR 383.73(m)

Section 383.73(m) requires that two State Driver's Licensing Agency (SDLA) staff members verify CLP and CDL applicants' test scores, completed application forms, and documents to prove legal presence. For SDLA offices with only one staff member on duty, the documents must be verified by a supervisor before issuance. Alternatively, when the supervisor is not available, copies must be made of the documents used to prove legal presence and domicile so that a supervisor can verify them along with the completed application within one

business day of issuance of a CLP or CDL. A number of States interpreted § 383.73(m) to require two employees to verify each document. They requested reconsideration, stating that the perceived requirement would burden existing resources and increase SDLA workload at a time when State agencies are experiencing reduced funding and resources. In addition, one State asked for clarification of how this provision affects central-issuance States.

FMCSA did not intend to create a redundant process under which two SDLA employees must verify each document a particular driver-applicant presents. Rather, FMCSA intended that more than one SDLA employee participate substantively in the licensing process. For example, one person might review the legal presence and other documentation the driver presents, while a second SDLA employee would conduct the required driving record check for driving violations, take the applicant's photograph, and issue the license. Moreover, the two employees need not work in the same location. For a central-issuance State, having one employee accept documents at the point of service and another verify some or all of them at the central-issuance facility would satisfy the requirements of this section. Similarly, for SDLA offices with only one staff member on duty, having a supervisor verify some or all of the documents within one business day of issuance of a CLP or CDL would satisfy the requirements of this section.

FMCSA amends § 383.73(m) to clarify that FMCSA requires two people to be substantively involved in the license issuance process, but does not require that two people verify each document.

#### Prohibiting Training Schools from Administering Skills Tests - 49 CFR 383.75(a)(7)

Section 383.75(a)(7) prohibits CDL training schools from skills testing applicants they train, except if there is no skills testing alternative within 50 miles of the school and the same examiner does not train and test the same student applicant. The FMCSA received petitions

requesting reconsideration on the grounds that the provision was too restrictive and would create hardship for States, training schools, and motor carriers.

FMCSA acknowledges the hardship and unintended consequences that this provision could cause for States, schools, and aspiring CDL holders. FMCSA believes, however, that prohibiting individual examiners from administering skills tests to student applicants they have trained will further the Agency's and Congress's fraud-prevention objectives. Accordingly, FMCSA amends § 383.75(a)(7) to provide that CDL training schools may test their own student applicants only so long as an individual examiner does not administer the skills test to drivers he or she has trained.

#### Bonding Requirements - 49 CFR 383.75(a)(8)(v)

Section 383.75(a)(8)(v) requires third party CDL testers to maintain bonds in an amount sufficient to pay for re-testing of drivers if required due to examiners engaging in fraudulent activities related to skills testing. A number of States requested that FMCSA reconsider this section to require bonding to be at the State's discretion or only apply to non-governmental entities.

As explained in the May 2011 rule, FMCSA is aware of a number of third party testers whose examiners engaged in fraudulent activities. As a result, a number of CDL holders were required to be re-tested, causing States and individuals to incur additional expenses. FMCSA implemented this provision to ensure that, in the event examiners are involved in fraudulent activities related to skills testing, States or individuals would have an opportunity to recoup expenses related to re-testing.

FMCSA acknowledges that a number of third-party testers are governmental entities performing testing services under inter-agency or other agreements. FMCSA believes there is a

lower risk associated with locating and recouping expenses from governmental entities than from private third-party testers. Moreover, FMCSA is aware that many States normally do not require their own political subdivisions and agencies, either at the State or local level, to obtain bonds. Accordingly, FMCSA amends § 383.75(a)(8)(v) to eliminate the bond requirement for governmental entities.

Prohibiting States from Using a Photo on the CLP - 49 CFR 383.153(b)(1) and 384.227

Section 383.153(b)(1) prohibits States from placing a digital color image or photograph or black and white laser engraved photograph or other visual representation of the driver on the CLP. FMCSA received petitions requesting reconsideration on the grounds that prohibiting the inclusion of a digital color image or photograph or black and white laser engraved photograph or other visual representation of the driver would cause economic harm to the States and/or make the CLP less secure.

FMCSA acknowledges that many, but not all, States have invested in technologies to develop secure CLPs that may or may not include a digital color image or photograph or black and white laser engraved photograph or other visual representation of the driver. Other provisions of this rule establish that the CLP is a two-part license comprised of the CLP document and the underlying CDL or non-CDL, and that the CLP document must be presented with the underlying CDL or non-CDL to be valid. Moreover, the CLP document will have the same driver's license number as the underlying CDL or non-CDL as well as language stating the two-part nature of the document, making this relationship clear. Accordingly, to accommodate the States' requests for flexibility in determining whether to include a photograph of the driver on the CLP, FMCSA amends § 383.153(b)(1) to make the reference to a digital color image or photograph or black and white laser engraved photograph of the driver permissive rather than

prohibited. The Department of Homeland Security (DHS), however, objected to having a State issue two photograph IDs to a single person, stating it would violate the one driver/one license/one record principle. In fact, the CLP and the underlying license constitute a single document with (potentially) two photographs. FMCSA leaves the determination up to the State to include a photo on the CLP, for an extra security measure when processing a CDL request.

FMCSA also amends section 384.227 to reflect the permissive inclusion of a photograph on the CLP.

#### Requiring Annual Background Checks for Skills Test Examiners – 49 CFR 384.228(h)

Section 384.228(h) requires States to conduct annual background checks on all test examiners. Some States petitioned for reconsideration of this requirement on the grounds that annual checks are burdensome.

On further consideration, FMCSA agrees that an annual background check of 2,200 skills test examiners is unnecessarily burdensome. Accordingly, FMCSA amends § 384.228(h) to require States to perform background checks on test examiners only at the time of hiring.

#### Substantial compliance – general requirements – 49 CFR 384.301(f)

Section 384.301(f) establishes the date by which all States must come into substantial compliance with the provisions of the May 2011 and today's final rules. FMCSA received petitions for reconsideration requesting an extension of the May 2011 final rule, so that the States would have sufficient time to implement the requirements established in that rule. Although FMCSA believes that a three year implementation period is generally sufficient, the Agency recognizes that many States have been waiting for today's final rule to implement changes to those provisions for which the Agency has granted petitions for reconsideration. As a result, and in consideration of the changes made in today's final rule, the Agency has extended the

compliance date for the changes established in the May 2011 and today's final rules by one year, to July 8, 2015.

#### Technical Corrections

In addition to addressing the issues raised in the petitions for reconsideration, FMCSA is also adopting the following technical corrections in this final rule:

- In § 383.73(f)(2)(ii), an incorrect cross reference to § 383.153(b) is changed to § 383.153(c).
- The preamble to the 2011 final rule made it clear that CLPs cannot be “transferred” from one State to another State. The regulatory language, however, did not adequately reflect that decision. The following sections are therefore revised to include a prohibition on transfer of CLPs: § 383.73, paragraphs (a)(2)(vi), (b)(6), (c)(7), (d)(7), (e)(5) and (m); § 383.153(h); § 384.105, definition of “Issue and Issuance;” § 384.227, and § 384.405(b)(1).

#### **IV. REGULATORY ANALYSES**

##### **E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**

FMCSA has determined this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). The estimated cost of the final rule is not expected to exceed the \$100 million annual threshold for economic significance. The Agency expects the final rule to generate cost savings in the form of reduced annual paperwork burden hours compared to the estimates in the 2011 final rule. The

provisions revised in this rule are intended to increase fraud reduction, improve safety, and facilitate entrance into the commercial motor vehicle (CMV) driver occupations. Many of the provisions of this rule impose minimal cost on the States or industry members, either because many States are already complying with the requirements contained in the May 2011 final rule or because the requirements have minimal impact on the SDLA or industry operations or procedures.

FMCSA emphasizes that this rule does not change requirements concerning State procedures in CDL processing or impose additional burden hours or costs. The Agency amends several sections of the current regulations in 49 CFR §§ 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5) to cover all transactions (initial issuance, transfer, renewal, or upgrades). Likewise, bonding requirements for third party testers as written in 49 CFR § 383.75(a)(8)(v) remain intact, the only difference being that a third party tester that is a government entity is no longer required to maintain a bond.

FMCSA recognized the potential loss of revenue from reduced enrollment when it prohibited training schools from administering skills tests to their own student applicants. This is even more evident in smaller training programs in rural areas. These training schools may be 100 miles or more from the nearest tester unaffiliated with the school, who would be available to test the school's drivers. Amending this section will allow CDL training schools to test their students, yet prohibit a skills test examiner who is also a skills instructor from administering a skills test to an applicant who received skills training from that examiner. The Agency does not know the number or location of training programs that conduct skills testing and therefore cannot produce a reasonable estimate of the total cost associated with this exclusion on skills testing.

The SAFE Port Act mandated that the Agency adopt certain regulations implementing the DOT Office of Inspector General's (OIG) anti-fraud recommendations. Applying these mandates required the Agency to adopt specific measures to prevent fraud in the CDL system. One of the measures required by the Agency is that CLP documentation be presented simultaneously with the underlying CDL or non-CDL to be valid.

The States will have the discretion to place a digital photograph on the CLP (see §383.153(b)(1) and §384.227); most SDLAs currently keep a digital photograph on file for all drivers they license.

FMCSA amends § 383.73(m) to clarify that FMCSA requires two people to be involved in the license issuance process, but does not require that two people verify each document. Two SDLA staff members can participate independently in the licensing process for a CLP/CDL. For example, one person might review the legal presence and other documentation the driver presents, while a second SDLA employee would view the driving record for violations, take the applicant's photo, and issue the license. Also, the two employees are not required to work in the same duty location. For a central-issuance State, having one employee accept documents at the point of service and another verify some or all of them at the central-issuance facility would satisfy the requirements of this section. The amendment to § 383.73(m) splits driver processing, but it will not double either the time or effort needed to issue a CDL. The \$2.97 million<sup>1</sup> per year cost for processing time will remain unchanged despite the amendment because the extra time burden has been factored into the May 2011 Final Rule.

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<sup>1</sup> This amount is calculated by multiplying (\$24.45/hr.) of a licensing clerk by the (1/6 of an hour) of processing time, by the number of new CDLs processed annually (530,000). Final Rule Regulatory Evaluation: Commercial Driver's License Testing and Commercial Learner's Permit Standards. p. 12 March 2011. The processing cost includes \$26,500 CLP CDLIS record change and \$779,100 tamper proofing of CLPs.

Lastly, FMCSA agreed that annual background checks for skills test examiners as described in 49 CFR 384.228(h) were unnecessary. FMCSA amends this section to require background checks on test examiners only at the time of hiring. This will produce a total cost saving of \$214,400<sup>2</sup> per year, after conducting an initial background check. This represents the only quantifiable cost savings of the rule, but other provisions will result in unquantifiable benefits.

### **Regulatory Flexibility Act**

FMCSA is not required to prepare a new Regulatory Flexibility Analysis (RFA) because the RFA performed for the May 2011, final rule pursuant to 5 U.S.C. 604(a) remains fully applicable to this final rule. The 2011 RFA provided estimates of the active motor carrier population and the number of entities subject to the rule at that time. While these numbers may have changed slightly in the intervening months, they do not affect the conclusions of the 2011 RFA in any way.

### **Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Robert Redmond, listed in the **For Further Information Contact** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce

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<sup>2</sup> OMB Control No. 2126-0011 titled, "Commercial Driver Licensing and Test Standards." May 1, 2012, pp. 22-23. This amount is calculated by multiplying 2,144 skills test examiners x \$100/per FBI background check = \$214,400.

or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

### **Unfunded Mandates Reform Act of 1995**

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 et seq.), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

### **E.O. 13132 (Federalism)**

FMCSA has analyzed this rule in accordance with the principles and criteria of Executive Order 13132, "Federalism," and has determined that it does not have federalism implications.

The Federalism Order applies to "policies that have federalism implications," which it defines as regulations and other actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Sec. 1(a). The key concept here is "substantial direct effects on the States." Sec. 3(b) of the Federalism Order provides that "[n]ational action limiting the policymaking discretion of the States shall be taken only where

there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.”

The rule amends the commercial driver’s license (CDL) program authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. chapter 313). States have been issuing CDLs in accordance with Federal standards for well over a decade. The CDL program does not have preemptive effect. It is voluntary; States may withdraw at any time, although doing so will result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule makes only a few small incremental changes to the requirements already imposed on participating States, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

**E.O. 12988 (Civil Justice Reform)**

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**E.O. 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not significant within the meaning of E.O. 12866 and the estimated cost of the rule is not expected to exceed the economic annual threshold. Therefore, no analysis of the impacts on children is

required. In any event, the Agency does not believe that this regulatory action could create an environmental or safety risk that could disproportionately affect children.

#### **E.O. 12630 (Taking of Private Property)**

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

#### **Privacy Impact Assessment**

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108-447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

#### **E.O. 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking affects the currently-approved information collection covered by the OMB Control No. 2126-0011 titled, “Commercial Driver Licensing and Test Standards.” The current OMB approved information collection has an annual burden of 1,628,582 hours and will expire on August 31, 2014.

This action updates and provides more uniform procedures for ensuring that the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle. It also adjusts some of the procedures used in the testing and licensing process due to recommendations accepted in the petitions for reconsideration of rulemaking. FMCSA believes this rule will result in an estimated decrease in the annual burden hours compared to the 2011 final rule.

The following table summarizes the burden hours for current and future information collection activities for the first 4 years of implementation of the new requirements and for the 5th and subsequent years of maintaining the CDL program with the new requirements. Relying on past experiences, the Agency believes there will be no increase in annual burden hours for the first 4 years because the States have 4 years to pass legislation and make the necessary system changes before implementing the new CDL testing and CLP standards, and posting the data generated by these new requirements to the CDLIS driver record. The increase of 262,705 total annual burden hours for the 5th and subsequent years (1,891,287 – 1,628,582) is due to the implementation of the new requirements for CDL testing and the issuance of CLPs. This represents a decrease in the total annual burden estimate for the 5<sup>th</sup> and subsequent years of 120,733 hours (2,012,020 – 1,891,287) from the previously anticipated total (see “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards,” 76 FR 26854, May 9, 2011) due to program changes in this rule, including the elimination of the second person to verify all documents and the elimination of the annual background checks for test examiners. A detailed analysis of the annual burden hour changes for each information collection activity can be found in the Supporting Statement of OMB Control Number 2126-0011.

#### CURRENT AND FUTURE INFORMATION COLLECTION BURDENS

Current and Future Information Collection Activities for States and CDL Drivers	Currently Approved Annual Burden Hours	Future Annual Burden Hours for First 4 Years (Program Change)	Future Annual Burden Hours for 5 <sup>th</sup> and Subsequent Years (Program Change)
State recording medical examiner's certificate information	205,333	205,333	205,333
State recording of the self-certification of commercial motor vehicle operation on the CDLIS record	3,984	3,984	3,984
State verification of medical certification status of all interstate CDL drivers	2,593	2,593	2,593
Driver to notify employer of convictions/disqualifications	640,000	640,000	640,000
Driver to complete previous employment paperwork	403,200	403,200	403,200
States to complete compliance certification documents	1,632	1,632	1,632
State to complete compliance review documents	2,400	2,400	2,400
Data/document checks and CDLIS recordkeeping	212,224	212,224	461,632
Drivers to complete the CDL application	48,000	48,000	56,486
CDL tests recordkeeping	84,000	84,000	77,910
Knowledge and skills test examiner certification	25,216	25,216	7,578
Skills test examiner monitoring and auditing	0	0	28,539
<b>Total Burden Hours</b>	<b>1,628,582</b>	<b>1,628,582</b>	<b>1,891,287</b>

### **National Environmental Policy Act and Clean Air Act**

The FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published March 1, 2004 in the Federal Register (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Paragraph 4.s of the Order. That CE relates to establishing regulations, and actions taken

pursuant to these regulations, concerning requirements for drivers to have a single commercial motor vehicle driver's license. In addition, the Agency believes that this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance.

**E.O. 13211 (Energy Supply, Distribution, or Use)**

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a "significant energy action" under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**E.O. 13175 (Indian Tribal Governments)**

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the

agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## **List of Subjects**

### **49 CFR Part 383**

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

### **49 CFR Part 384**

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

Accordingly, FMCSA amends parts 383 and 384 of title 49 of the Code of Federal Regulations as set forth below:

## **PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

1. The authority citation for part 383 is revised to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.86.

2. Amend § 383.73 by revising paragraphs (a)(2)(vi), (b)(6), (c)(7), (d)(7), (e)(5), (f)(2)(ii), and (m) to read as follows:

### **§ 383.73 State procedures.**

(a) \* \* \*

(2) \* \* \*

(vi) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of State of domicile specified in § 383.71(a)(2)(vi). Exception: A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

(b) \* \* \*

(6) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). Exception: A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

\* \* \* \* \*

(c) \* \* \*

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in §

383.71(b)(10). Exception: A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

\* \* \* \* \*

(d) \* \* \*

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). Exception: A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and

\* \* \* \* \*

(e) \* \* \*

(5) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). Exception: A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or Non-domiciled

CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) The State must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with §383.153(c); and

\* \* \* \* \*

(m) Document verification. The State must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, Non-domiciled CLP, CDL or Non-domiciled CDL.

\* \* \* \* \*

3. Amend § 383.75 by revising paragraphs (a)(7) and (a)(8)(v) to read as follows:

**§ 383.75 Third party testing.**

(a) \* \* \*

(7) A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and

(8) \* \* \*

(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.

\* \* \* \* \*

4. Amend § 383.153 by revising paragraphs (b)(1) and (h) to read as follows:

**§ 383.153 Information on the CLP and CDL documents and applications.**

\* \* \* \* \*

(b) *Commercial Learner's Permit*. (1) A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.

\* \* \* \* \*

(h) On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER’S LICENSE PROGRAM**

5. The authority citation for part 384 is revised to read as follows:

**Authority:** 49 U.S.C. 31136, 31301, et seq., and 31502; secs. 103 and 215 of Pub. L. 106-59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

6. Amend § 384.105 by revising the definition “Issue and Issuance” to read as follows:

**§ 384.105 Definitions**

\* \* \* \* \*

Issue and issuance means the initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and the initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL, as described in § 383.73 of this subchapter.

\* \* \* \* \*

7. Amend § 384.227 to revise paragraph (c) and add paragraph (d) read as follows:

**§ 384.227 Record of digital image or photograph.**

\* \* \* \* \*

(c) Check the digital color image or photograph or black and white laser engraved photograph on record whenever the CLP applicant or holder appears in person to issue, renew or upgrade a CLP and when a duplicate CLP is issued.

(d) If no digital color image or photograph or black and white laser engraved photograph exists on record, the State must check the photograph or image on the base-license presented with the CLP or CDL application.

8. Amend § 384.228 by revising paragraph (h) to read as follows:

**§ 384.228 Examiner training and record checks.**

\* \* \* \* \*

(h)(1) Complete nationwide criminal background check of all State and third party test examiners at the time of hiring.

(2) Complete nationwide criminal background check of any State and third party current test examiner who has not had a nationwide criminal background check.

\* \* \* \* \*

9. Amend § 384.301 by revising paragraph (f) to read as follows:

**§ 384.301 Substantial compliance – general requirements.**

\* \* \* \* \*

(f) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of July 8, 2011 and [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] as soon as practical but, unless otherwise specifically provided in this part, not later than July 8, 2015.

\* \* \* \* \*

10. Amend § 384.405 by revising paragraph (b)(1) to read as follows:

**§ 384.405 Decertification of State CDL program.**

\* \* \* \* \*

(b) \* \* \*

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or national Driver Registry problem Driver Pointer System (PDPS) as required by § 383.73 of this subchapter when issuing, renewing or upgrading a CLP or issuing, renewing, upgrading or transferring a CDL.

\* \* \* \* \*

Issued under the authority of delegation in 49 CFR 1.73: March 18, 2013

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Anne S. Ferro  
Administrator

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